

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 282/MP/2019

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 31st August, 2023

In the matter of

Petition under Section 142 of the Electricity Act, 2003 for non-compliance of the order dated 3.12.2018 passed in Petition No.242/MP/2017 by Power Grid Corporation of India and for issuance of appropriate direction to Power Grid Corporation of India for payment of amount to be refunded after deduction of relinquishment charges from the encashed Bank Guarantee furnished by the Petitioner along with interest.

And

In the matter of

Aryan MP Power Generation Private Limited,

129, Transport Centre,

Rohtak Road,

Punjabi Bagh,

New Delhi-110 035

..... Petitioner

VERSUS

Power Grid Corporation of India Limited,

B-9, Qutab Institutional Area,

Katwaria Sarai,

New Delhi-1110 016

Central Transmission Utility of India Limited,

B-9, Qutab Institutional Area,

Katwarfia Sarai,

New Delhi-1110 016

... Respondents

Parties present:



Shri Deepak Khurana, Advocate, DBPL
Shri Ashwini Kumar Tak, Advocate, DBPL
Shri Amal Nair, Advocate, Rajasthan Discoms
Ms. Shivani Verma, Advocate, Rajasthan Discoms
Shri Ravi Kishore, Advocate, PTCIL
Shri Keshav Singh, Advocate, PTCIL
Shri Dhruv Tripathi, Advocate, PTCIL

ORDER

The Petitioner, Aryan MP Power Generation Private Limited (in short 'AMPPGPL'), has filed the present Petition for seeking direction to the Respondent, Power Grid Corporation of India Limited (PGCIL) [now known as the Central Transmission Utility of India Limited (CTUIL)] to comply with the direction of the Commission passed in order dated 3.12.2018 in Petition No. 242/MP/2017 and to pass the appropriate order imposing penalty upon the Respondent under Section 142 read with Section 146 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), for non-compliance of the said order. The Petitioner has made the following prayers:

“(a) hold and declare that the Respondent has willfully violated the direction of this Hon’ble Commission under para 22 of the order dated 03.12.2018 passed in Petition No. 242/MP/2017;

(b) pass an appropriate order imposing penalty upon the Respondent under Section 142 read with Section 146 of the Electricity Act, 2003 for non-compliance of the direction made by this Hon’ble Commission under para 22 of the order dated 03.12.2018 passed in Petition No. 242/MP/2017;

(c) direct the Respondent to make payment of Rs. 4,43,00,000/- along with interest @ 9% to be calculated from 23.10.2017 till the date of receipt of the amount by the Petitioner in compliance of the direction made by this Hon’ble Commission under para 22 of the order dated 03.12.2018 passed in Petition No. 242/MP/2017;

(d) direct the Respondent to comply with the direction made by this Hon’ble Commission under para 22 of the order dated 03.12.2018 passed in Petition No. 242/MP/2017 in future; and



(e) *pass any order and/or any such orders as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice."*

Background:

2. The Petitioner, who was executing a 1200 MW (4X300 MW) generating station in the State of Madhya Pradesh, was granted a Long Term Access (LTA) for 1200 MW. A BPTA dated 24.2.2010 was signed between the Petitioner and the Respondent, PGCIL. As per the BPTA, an evacuation system is to be executed by the Petitioner and the common transmission system was to be executed by PGCIL. Due to various factors, the Petitioner abandoned the project and requested that PGCIL not to construct the transmission lines for its project. The transmission line, which was within the scope of PGCIL, achieved COD on 1.4.2014. The provisional transmission charges for the said transmission lines were determined by the Commission in its order dated 18.12.2013 in Petition No. 289/TT/2013. The Petitioner, thereafter, filed a Petition No. 242/MP/2017 *inter-alia* seeking declaration that the letter of invocation of Bank Guarantee (hereinafter referred to as 'the BG') dated 23.10.2017 issued by PGCIL and the encashment of the BG dated 23.2.2010 for Rs. 56.10 crore to be illegal and for direction to return the encashed BG to the Petitioner along with damages. The said Petition was decided by the Commission vide its order dated 3.12.2018 whereby the Commission, *inter-alia*, held as follows:

"21. In the third prayer, the Petitioner has prayed to direct PGCIL to pay damage to the Petitioner due to illegal invocation of BG. In view of our findings that there was no infirmity or illegality in the action of PGCIL to encash the BG, this prayer is not sustainable.

22. Since, the Petitioner has relinquished the LTA granted and the liability of the Petitioner for payment of relinquishment charges shall be decided in the light of the decision in Petition No. 92/MP/2015, we are of the view that there is no



requirement to direct PGCIL to refund the encashed BG at this stage. However, if any amount becomes due and payable after adjustment of the relinquishment charges, the same shall be refunded by PGCIL to the Petitioner with 9% interest from the date of encashment till the date of payment.

23. In the IA No. 80/2017, the Petitioner has prayed to pass an ex-parte ad-interim order directing PGCIL to deposit the invoked amount to the Petitioner or in the alternative deposit the same with the Commission. Since we are disposing of the Petition and have held that there is no infirmity or illegality in the encashment of the BG during the pendency of the Petition No. 69/MP/2014, the prayer for refunding the BG amount to the Petitioner is rejected. In view of our decision in the preceding paragraph that the Petitioner shall be refunded the balance amount of BG after adjusting the relinquishment charges, the prayer of the Petitioner to deposit the BG amount with the Commission is also rejected.”

3. Accordingly, in the above order, the Commission held that since the Petitioner had relinquished the LTA and its liability for payment of relinquishment charges was to be decided in terms of the decision in Petition No. 92/MP/2015, there was no requirement to direct PGCIL to refund the encashed BG at that stage. However, if any amount becomes due and payable after adjustment of the relinquishment charges, the same shall be refunded by PGCIL to the Petitioner with 9% interest from the date of encashment until the date of payment. Citing the non-compliance of the aforesaid direction by the Respondent, the Petitioner has filed the present Petition.

Submissions of the Petitioner:

4. The Petitioner has mainly submitted as under:
- (a) The Petitioner had filed a Petition No.69/MP/2014 seeking adjudication of the issue of its failure to perform its obligation under the BPTA due to force majeure events.
 - (b) The issue of relinquishment of LTA and the consequent liability of the generators to pay the compensation/charges towards such relinquishment was dealt with in Petition No. 92/MP/2015. The Commission vide its order dated



21.7.2015 directed all concerned LTA applicants to keep their BGs valid till the decision with regard to relinquishment charges. Accordingly, the Petitioner kept BG alive, which was last extended till 31.3.2018. However, while the issue of relinquishment of LTA was pending adjudication, PGCIL arbitrarily invoked the BG vide letter dated 23.10.2017 without any cause of action.

(c) Aggrieved by the decision of PGCIL, the Petitioner approached the Hon`ble High Court of Delhi, being Writ Petition (C) No. 9386 of 2017. The above Writ Petition was disposed of as withdrawn on the same day i.e. 25.10.2017 since by the time, the matter was taken up before the court, PGCIL had already encashed the BG.

(d) Subsequently, the Commission in its order dated 31.10.2017 in Petition No. 69/MP/2014 decided that the Petitioner cannot be granted any relief from its liability for payment of transmission charges under clause 9 of the BPTA. However, the Commission further held that the Petitioner was affected by a force majeure with effect from 11.9.2013 when the water linkage was cancelled.

(e) Meanwhile, the Petitioner also filed a Petition No. 242/MP/2017. The Commission after hearing the parties, vide its order dated 3.12.2018 had observed that if any amount becomes due and payable after adjustment of the relinquishment charges, the same shall be refunded by PGCIL to the Petitioner with 9% interest from the date of encashment till the date of payment. The Petitioner has preferred an appeal against the above order dated 3.12.2018 before the Appellate Tribunal for Electricity (APTEL) which is pending adjudication and there is no application for stay or for that matter any other interim relief sought by the Petitioner. Therefore, the said order is binding on the parties thereof.

(f) Meanwhile, the Commission passed an order dated 8.3.2019 in Petition No. 92/MP/2015. Based on the said order, PGCIL determined the stranded capacity and relinquishment charges, in terms of the order of the Commission dated

20.5.2019. PGCIL calculated the relinquishment charges for the Petitioner`s project at Rs. 24.58 crore.

(g) The Petitioner, vide its letter dated 24.5.2019 followed by another letter dated 2.7.2019 requested PGCIL to refund of Rs. 31.52 crore (Rs.56.10 crore – Rs. 24.58 crore) along with 9% interest after adjustment of the relinquishment charges from the date of encashment till the date of payment, i.e. the date on, which relinquishment charges were determined and calculated by PGCIL on 20.5.2019.

(h) Consequently, PGCIL made a part payment of Rs. 27.09 crore on 18.7.2019. However, the PGCIL did not pay the 9% interest as per the direction of the Commission. The Petitioner, vide its letter dated 24.7.2019 requested PGCIL to share the details of the payment made by it and schedule for refunding the balance amount or reasons for not refunding the total amount in terms of the Commission`s order in Petition No. 242/MP/2017.

(i) The impugned action of PGCIL is clearly in wilful contravention of the order dated 3.12.2018 in Petition No. 242/MP/2017 and for such violation and disobedience of the direction of the Commission, PGCIL is liable to make payment of compensation to be determined by the Commission under Section 57 of the Act apart from the penalties that may be imposed over and above the refund of amount along with interest as per the provisions of the Section 142 of the Act.

5. The matter was admitted on 12.12.2019 and notice was issued to the Respondent to file its reply. The Petitioner and the Respondent have filed their respective replies and rejoinders.

Reply by PGCIL

6. PGCIL, in its reply dated 24.1.2020, has mainly submitted as under:



(a) The present Petition has become infructuous in as much as the directions of which non-compliance has been alleged, have since then been modified by the Commission vide order dated 26.12.2019 in Review Petition No. 16/RP/2019 in which it has been held that if any amount becomes due and payable after adjustment of the relinquishment charges, the same shall be refunded by PGCIL to the Petitioner with any interest earned from the date of encashment till the date of payment. Therefore, the grievance of the Petitioner no longer survives.

(b) Even otherwise, there is no wilful non-compliance by the Respondent. The Commission while disposing of the Petition No. 242/MP/2017, vide order dated 3.12.2018, deliberated upon whether invocation of the BG by the Respondent during the pendency of the Petition No. 69/MP/2014 was illegal and arbitrary as alleged, and held that there was no infirmity or illegality in the action of the Respondent for invocation of the BG. Insofar as the relief of refund of BG in the light of the Order dated 31.10.2017 sought by the Petitioner was concerned, the Commission held that since the BG given by the Petitioner indicated that the same could be encashed notwithstanding any differences between the Petitioner and the Respondent, the pendency of Petition No.69/MP/2014 could not have come in the way of the Respondent for encashing the said BG in the absence of any stay on such encashment.

(c) While observing that the Petitioner had relinquished its LTA and its liability for payment of relinquishment charges was to be decided in light of the decision in Petition No.92/MP/2015, the Commission [in para 22] held that there was no requirement to direct the Respondent to refund the encashed BG at that stage and that if any amount became due and payable after adjustment of the relinquishment charges, the same was to be refunded by the Respondent to the Petitioner with 9% interest from the date of encashment till the date of payment. In this manner, while upholding the encashment of BG by the Respondent and permitting the adjustment of the encashed amount towards the relinquishment charges payable by the Petitioner as per the aforesaid Order passed in Petition No.92/MP/2015, the



Commission directed the Respondent to return the balance encashed amount to the Petitioner along with 9% interest per annum from the date of encashment of BG.

(d) The issue as regards payment of relinquishment charges by the generators such as the present Petition was decided by the Commission vide its order dated 8.3.2019 passed in Petition No.92/MP/2015 wherein, the Commission held that the project developers like the Petitioner who had abandoned their projects and had sought relief from the payment of relinquishment charges on the ground of being affected by force majeure, were liable to pay relinquishment charges as per the methodology detailed by it. Based on the said order dated 8.3.2019, the Respondent computed the relinquishment charges as per the methodology prescribed by the Commission and uploaded the same on its website. The relinquishment charges computed for the Petitioner came to Rs.24.58 crore. Pursuant thereto, the Petitioner, vide its letter dated 24.5.2019, sought a refund of Rs.31.52 crore along with interest @9% from the date of the encashment of BG i.e. 23.10.2017 till the date of actual payment of Rs.24.58 crore against the relinquishment charges intimated by the Respondent. Accordingly, Rs.27.09 crore was refunded to the Respondent vide a bank transaction dated 18.7.2019 after withholding Rs.24.58 crore towards relinquishment charges and Rs.4.43 crore towards potential tax liability.

(e) The issue of interest awarded in the Commission`s order dated 3.12.2018 was examined by the Respondent in light of its revenue-neutral entity when discharging functions under Section 38 of the Act including the function of billing, collection and disbursement of transmission charges. In the instant Petition, the subject matter is the amount of interest payable (if any) on the balance amount remaining from the encashed amount of construction phase BG after adjustment of applicable relinquishment charges which have been held to be in the nature of transmission charges by this Commission in its order dated 8.3.2019 passed in Petition No.92/MP/2015. The administrative functionality in which the Respondent was

acting in returning the balance amount to the Petitioner from its encashed BG after adjustment of applicable relinquishment charges is essentially a part of its revenue-neutral regulatory role of billing, collection, and disbursement of transmission charges.

(f) The amount of interest awarded by the Commission would have resulted in unjust financial injury to them. Accordingly, the Respondent filed a Review Petition being Petition No.16/RP/2019 seeking review of the order dated 3.12.2018 passed by the Commission in Petition No.242/MP/2017 to the extent of an award of 9% interest on the amount to be refunded to the Petitioner after adjustment of relinquishment charges.

(g) During the pendency of the present Petition, the Commission while disposing of the Review Petition No. 26/RP/2019 vide its order dated 26.12.2019 modified the order dated 3.12.2018 (of which non-compliance has been alleged in the present Petition) and directed the Respondent to refund any interest “earned” from the date of encashment till the date of payment. In this regard, the proceeds from the encashment of BG were received in current account of the Respondent and was retained by the Respondent in compliance with the specific directions of this Commission. Owing to the Respondent being revenue neutral, the proceeds were retained without any intention to earn revenue out of it. As it was acting in the course of fulfilling its statutory duties, it was never the foresight that any revenue should be earned from the encashed BG. Hence, it was by design that no interest was earned by the Respondent on the encashed BG amount and hence no interest became due to the Petitioner as per the directions of the Commission-

Rejoinder to the reply of the PGCIL

7. The Petitioner, in its rejoinder dated 10.6.2021, has mainly submitted as under:

(a) Pursuant to the filing of the instant Petition, PGCIL on 10.8.2019, with the clear intention of delaying the legitimate payment, due to the Petitioner, and to



wriggle out of its obligation ensuing out of the 3.12.2018 (Compliance Order), filed a Review Petition No. 16/RP/2019. The Commission vide its order dated 26.12.2019, modified para 22 of the compliance order to the extent that if any amount becomes due and payable after adjustment of the relinquishment charges, the same shall be refunded by PGCIL to the Petitioner, with any interest earned from the date of encashment till the date of payment.

(b) Notwithstanding the passing of the Review Order, PGCIL has acted in contravention of the compliance order and Notification dated 20.5.2019, by which it determined relinquishment charges for the Petitioner's Project. By the said Notification, PGCIL computed that the amount refundable to the Petitioner is Rs. 31.52 crore (i.e. Rs.56.10 crore - Rs.24.58 crore), along with interest at 9% from the date of encashment of BG till the payment of the said amount. Out of the said amount, however, PGCIL made a payment of only Rs. 27.09 crore withholding Rs. 4.43 crore (31.52 crore -27.09 crore) from the principal amount. Evidently, PGCIL has illegally detained/withheld the legitimate entitlement of the Petitioner since 2017. Due to this, the Petitioner is unable to service its debt causing grave financial hardship to the Petitioner.

(c) The Petitioner vide its letter dated 13.11.2019, reiterated that on a verbal communication it was communicated by PGCIL that Rs. 4.43 crore equivalent to 18% GST on Rs. 24.58 crore of relinquishment charges worked out by PGCIL, has been retained pending clarification from the competent authority. The aforesaid amount towards relinquishment charges as calculated by PGCIL, is also pending adjudication before the APTEL. In view of this, it was requested to release the said amount of Rs. 4.43 crore to the Petitioner on receipt of an undertaking by the Petitioner that, upon GST being imposed by the competent authority, the same shall be paid to PGCIL. However, no response to the aforesaid letter, has ever been received by the Petitioner. The Petitioner has reiterated the aforesaid concern vide further letters/ communications dated 3.11.2020 and 11.3.2021.



(d) The Respondent had preferred a Petition No. 266/MP/2020 before this Commission *inter alia* seeking permission to raise invoices for relinquishment charges as directed under order dated 8.3.2019 passed in Petition No.92/MP/2015 and order dated 11.12.2019 passed in Petition No. 252/MP/2019 only after an advance ruling on the applicability of GST on relinquishment charges is obtained from the Tax Authority. The Commission vide its order dated 7.8.2020 disposed of the aforementioned Petition as withdrawn.

(e)The Respondent having withdrawn the Petition, it is apt to allow the prayer of the Petitioner made in the Petition and whenever, the relinquishment charges are finally determined, the same can be computed and the Petitioner will be liable to pay the GST amount. Therefore, at this juncture, it is inequitable on the part of the Respondent to hold on to the said amount even after the passing of the order by the Commission.

(f) Order dated 8.3.2019, passed by the Commission in Petition No. 92/MP/2015, does not entitle the PGCIL to withhold amounts due to the Petitioner on account of any potential tax liability. Accordingly, PGCIL cannot withhold Rs. 4.43 crore as the same is not provided in the detailed methodology, for computation of relinquishment compensation, laid down by the Commission.

(g) Both the Compliance Order and Review Order are sub-judice as the Petitioner has challenged the same before the APTEL. PGCIL, by withholding legitimate dues of the Petitioner has acted against the Commission's directions, passed in the compliance order, thus, the instant Petition is maintainable under Section 142 of the Act.

8. During the pendency of the Petition, the Ministry of Power, Government of India vide Gazette Notification dated 9.3.2021 notified the Central Transmission Utility of India Limited (CTUIL), as the 'Central Transmission Utility' within the meaning of Section 2(10)

of the Act, to undertake and discharge all functions of CTU w.e.f 1.4.2021. Thus, by virtue of the said notification, the functions of the CTU which were earlier vested in PGCIL, came to be vested in CTUIL. Consequently, by letter dated 14.10.2022, the Petitioner was also asked to implead CTUIL as party to the Petition and to file a revised memo of parties. Accordingly, the Petitioner on 17.10.2022 has filed a revised memo of parties impleading CTUIL as Respondent No.2 in the matter.

Hearing dated 14.2.2023

9. During the course of the hearing, learned counsel for the Petitioner informed the Commission that while CTUIL has refunded the amount of Rs. 4.50 crore (i.e. Rs. 4.43 crore towards principal and Rs. 7 lakh towards interest), CTUIL has not furnished the break-up of the interest calculated by it on the principal amount. It was pointed out that originally as per the order dated 3.12.2018 in Petition No. 242/MP/2017, CTUIL was directed to refund the encashed BG amount after the adjustment of relinquishment charges at an interest rate of 9%. However, subsequently, vide order dated 26.12.2019 in Review Petition No. 16/RP/2019, the Commission held that any such amount becoming due and payable after adjustment of relinquishment charges, CTUIL shall refund the same to the Petitioner with interest as earned from the date of encashment till the date of payment. Learned counsel for the Petitioner further submitted that the Petitioner is entitled to interest apart from the direction made by the Commission in its orders dated 3.12.2018 and 26.12.2019.

10. Vide Record of Proceedings for the hearing dated 14.2.2023, the CTUIL was directed to file the details regarding interest earned on the encashed amount of Rs. 4.43 crore.

11. CTUIL, vide its affidavit dated 23.3.2023, has mainly submitted as under:

(a) CTUIL had paid an amount of Rs. 4.43 crore along with Rs. 7.79 lakh towards interest (i.e., a total of Rs. 4.5079 crore) to the Petitioner on 13.2.2023. The interest amount of Rs. 7.79 lakh was arrived at based on the available bank certificate with CTUIL on the date of the payment, on a proportionate basis.

(b) Pursuant to the direction of the Commission dated 14.2.2023, CTUIL requested the State Bank of India to provide details of the total interest earned in CTUIL's account on Rs 4.43 crore from 31.7.2021 (i.e., the date of transfer of funds from the PGCIL to CTUIL) till 13.2.2023 (i.e., the date of transfer of funds to the Petitioner). As per the certificate dated 17.2.2023 issued by the State Bank of India, Corporate Accounts Group-II, New Delhi, the interest earned between 2.8.2021 and 13.2.2023 on the amount of Rs. 4.43 crore is Rs. 23,87,280/-.

(c) For the interest earned from the date of encashment up to 31.7.2021, a clarification was sought by CTUIL from PGCIL. In this regard, PGCIL vide its email dated 28.2.2023 informed that no interest was earned on the aforesaid amount for the said period as the funds were kept in the current account. In this regard, the details of the interest earned are as below:

| S. No. | Period/date | Principal Amount (in Rs. crore) | Interest (in Rs.) | Remarks |
|--------|-------------------------|---------------------------------|-------------------|--|
| 1 | 26.10.2017 to 17.7.2019 | 56.10 | 0.00 | On encashment of BG, funds were kept by Respondent No. 1 (POWERGRID) in Non-Interest-Bearing Current Account, as per its email dated 28.02.2023. |



| | | | | |
|----|--|----------------------------|---------------------|---|
| 2 | 18.7.2019 | 27.09 | 0.00 | Rs. 27.09 crore refunded to the Petitioner after retaining Rs 24.58 crore towards relinquishment charges and Rs 4.43 crore towards potential tax liability. |
| 3 | Balance as on 18.7.2019 | 29.01 | 0.00 | |
| 4 | 18.7.2019 to 31.7.2021 | 29.01 (24.58 + 4.43) | 0.00 | No interest earned as funds were kept by Respondent No. 1 in Non-Interest-Bearing Current Account Rs. 24.58 crore adjusted towards relinquishment charges due from the Petitioner. |
| 5 | Balance as on 31.7.2021 | 4.43 | 0.00 | |
| 6 | 2.8.2021 to 13.2.2023 | 4.43 | 23,87,280.00 | On 31.7.2021, Rs. 4.43 crore were transferred by the Respondent No. 1 to CTUIL's account. CTUIL kept the funds in Bank Account with Corporate Liquid Term Deposit ("CLTD") facility. As per the certificate dated 17.02.2023 from SBI, interest amount on Rs. 4.43 crore from 2.8.2021 to 13.2.2023 is Rs. 23,87,280.00. |
| 7 | Total available as on 13.2.2023 | 4.43 | 23,87,280.00 | The details of the interest earned attached |
| 8 | Paid to the Petitioner on 13.2.2023 | 4.43 | 7,79,000.00 | Rs. 4,50,79,000 (Rs 4,43,00,000 + 7,79,000) paid to the Petitioner vide UTR No.: SBINR12023021331744870 dated 13.02.2023 |
| 9 | Paid to the Petitioner on 13.3.2023 | | 16,08,280.00 | Rs 16,08,280 paid to the Petitioner vide UTR No.: SBIN423072699901 dated 13.3.2023 |
| 10 | Present balance | 0.00 | 0.00 | |

(d) The total interest earned on Rs. 4.43 crore is Rs. 23,87,280/- out of which an amount of Rs. 7,79,000/- was paid to the Petitioner on 13.2.2023, and the balance amount of Rs. 16,08,280/- was paid to the Petitioner on 13.3.2023.

(e) All dues with respect to the balance encashed BG amount and the interest earned thereupon have been discharged by CTUIL, and that CTUIL has no outstanding dues of the Petitioner as on date.

Hearing Dated 25.4.2023

12. Learned counsel for the Respondent, CTUIL during the course of the hearing submitted that in compliance with the direction of the Commission vide Record of Proceedings for the hearing dated 14.2.2023, CTUIL has filed its affidavit indicating the details regarding the interest earned on the encashed amount of Rs. 4.43 crore from the date of encashment till the date of payment. Learned counsel submitted that CTUIL had paid an amount of Rs. 4.43 crore along with Rs. 7.79 lakh towards interest to the Petitioner on 13.2.2023 and the above interest amount was arrived at based on the available bank certificate with CTUIL on the date of the payment, on a proportionate basis. Learned counsel further submitted that CTUIL had requested the State Bank of India (SBI) to provide the details of the total interest earned by it in CTUIL's account of Rs. 4.43 crore from 31.7.2021 (i.e. the date of transfer of funds from PGCIL to CTUIL) till 13.2.2023, and as per the certificate dated 17.2.2023 issued by SBI, the interest earned for the aforesaid period is Rs. 23.87 lakh. Accordingly, the balance interest amount of Rs. 16.08 lakh was paid to the Petitioner on 13.3.2023. Learned counsel further submitted that for the interest earned from the date of encashment up to 31.7.2021, a clarification was sought by CTUIL from PGCIL, and in this regard, PGCIL vide e-mail dated 28.2.2023 informed that no interest was earned on the aforesaid amount.

13. Learned counsel for the Petitioner submitted that as per the affidavit dated 23.3.2023 filed by CTUIL, no interest was earned by PGCIL on the encashed BG amount from the date of its encashment i.e. 26.10.2017 upto 31.7.2021 as the funds were kept in non-interest-bearing current account. Learned counsel, submitted that the Petitioner cannot be made to suffer on account of the inefficacies of PGCIL and the PGCIL being a



commercial organization, ought to have kept such fund in the interest-bearing account. Learned counsel further submitted that there is a contradiction in the statement of PGCIL inasmuch as, during the proceedings of Review Petition No. 16/RP/2019, PGCIL had indicated that the amount under the BG had been disbursed in the PoC Pool, whereas PGCIL has now indicated that it was kept in a non-interest-bearing current account. Learned counsel sought liberty to file its response to the CTUIL's affidavit dated 23.3.2023.

14. The Petitioner, vide its written submissions dated 16.5.2023, has mainly submitted as under:

(a) CTUIL has categorically submitted before the Commission in Petition No. 16/RP/2019 that the encashed amount was disbursed in the PoC pool in terms of the Regulations of the Commission and therefore, there is no question of earning the interest, the same was also rejected by the Commission vide order dated 16.12.2019. The Commission itself held that regardless of whether the money was disbursed in the PoC Pool, interest ought to be paid.

(b) CTUIL in the Review Petition had contended that the encashed money was never 'retained' and instead 'disbursed' in the PoC Pool as per the Billing, Collection, and Disbursement Procedure issued under the Sharing Regulations, 2020. However, in the additional affidavit dated 23.3.2023 filed by CTUIL, there is no whisper of such a fact, to the contrary, it has been unequivocally stated that the money was instead 'retained' in 'non-interest bearing account' without according any basis whatsoever. The same raises serious questions about the credibility and truthfulness of its claim. The Commission may take cognizance of the same and seek explanation from the CTUIL.

(c) Even assuming but not admitting that the amount was kept in a non-interest bearing account, it cannot be that the CTUIL is allowed the benefit out of its own commercial decision to keep the money in a non-interest bearing account, such that it can escape from the directions of the Commission to reimburse and restore the Petitioner, *de-hors* the fact that it had taken a commercial decision to keep the encashed amount in non-interest bearing account.

(d) CTUIL is liable for the interest as a carrying cost on the encashed amount till actual realisation, not as a penalty but as restoration for the loss of value of money based on settled commercial principles. In this regard, reliance has been placed on the decisions of APTEL in the cases of Lanco Amrkantak Power Limited vs. Haryana Electricity Regulatory Commission dated 22.5.2019 in Appeal No. 308 of 2017 and SLS Power Limited vs. Andhra Pradesh Electricity Regulatory Commission, [2012 SCC OnLine APTEL 209].

Hearing dated 5.7.2023

15. Subsequent to reserving the order vide Record of Proceedings for the hearing dated 25.4.2023, the representative of Respondent No. 1, PGCIL mentioned the matter on 5.7.2023 and sought permission to file an additional affidavit in the matter. The representative of PGCIL submitted that it is essential for coming to a logical conclusion in the matter. Accordingly, PGCIL was permitted to file its reply in this regard.

16. PGCIL, in its affidavit dated 17.7.2023, has submitted as under:

(a) With regard to the issue of interest, the BG amount of Rs 56.10 crore, furnished by the Petitioner, was encashed on 25.10.2017. Subsequently, Rs 27.09 crore was refunded on 18.7.2019 to the Petitioner after retaining Rs 24.58 crore towards relinquishment charges and Rs 4.43 crore towards potential GST tax liability. Upon separation of CTUIL from PGCIL w.e.f. 1.4.2021, all encashed BG

amounts were transferred to the CTUIL on 31.7.2021. Accordingly, interest applicable, if any, to the refunded amount of Rs 27.09 crore is only up to 18.7.2019. Further, regarding the amount of Rs 4.43 crore retained towards potential GST tax liability, this amount was kept in the current account of PGCIL up to 31.7.2021 and on 31.7.2021, this amount was transferred to CTUIL.

(b) PGCIL, vide its mail dated 28.2.2023, informed the CTUIL that no CLTD/FDR has been made by PGCIL against the abovementioned amounts of Rs 27.09 crore and Rs 4.43 crore, respectively. However, interest payable by the bank on the auto sweep facility can be considered to calculate the notional interest accrued. Therefore, the notional interest accrued due to the above auto sweep facility has been derived on the basis of interest rates issued by the State Bank of India for different “Bulk Term Deposits” tenures. On the above basis, the interest accrued is as under:

| Amount | Period | Interest accrued |
|----------------|--|-----------------------------|
| Rs 27.09 crore | 25.10.2017 to 18.7.2019 (date on which amount of Rs 27.09 crore refunded after adjusting relinquishment charges of Rs 24.58 crore) | Rs. 2,67,98,690.00/- |
| Rs 4.43 crore | 25.10.2017 to 31.7.2021 (date on which all encashed BG amounts were transferred to CTUIL) | Rs. 81,96,593.00/- |
| Total | | Rs. 3,49,95,283.00/- |

Hearing dated 31.7.2023

17. During the course of the hearing, the learned counsel for the Petitioner submitted that pursuant to the liberty granted by the Commission vide Record of Proceedings for the hearing dated 5.7.2023, Respondent No.1, PGCIL, has filed an affidavit dated 17.7.2023 stating therein that the notional interest accrued on the encashed Bank Guarantee amount due to the auto sweep facility may be considered ‘interest earned’ in the present case. Learned counsel, however, emphasized that the Respondent has been

taking an inconsistent stand in its various affidavits on the aspect of the 'interest earned' on the encashed Bank Guarantee amount, and keeping in view that the Petitioner has been required to incur the interest at a much higher rate (approximately 14%), the Respondents ought to be directed to also pay the penal interest/ carrying cost on the amount of interest refunded/to be refunded by them.

18. After hearing the learned counsels for the parties, the Commission directed the parties to file their respective written submissions. In response, PGCIL has filed a written submission. However, the Petitioner has not filed it.

Analysis and Decision

19. We have considered the submissions of the Petitioner and the Respondents and perused the documents available on record. Based on the above, the issue that arises for our consideration is whether the Petitioner is entitled to interest on BG encashed by CTUIL.

20. The Petitioner had filed Petition No. 69/MP/2014 seeking a direction for relinquishment of its LTA without any liability to pay the relinquishment charges and a direction to the Respondent CTUIL to return the BG furnished by it under the BPTA. The Commission, after hearing the parties, observed, vide order dated 23.10.2017 that considering the involvement of other generation developers in the common transmission system, the Petitioner would be liable for either transmission charges or relinquishment charges to the extent of its LTA, and therefore the Petitioner cannot be granted any relief from its liability for payment of transmission charges under clause 9 of the BPTA. As

regards the relinquishment of LTA, the Commission observed that there is no embargo in the Connectivity Regulations for the relinquishment of LTA, but such relinquishment is subject to payment of charges for the stranded capacity. Therefore, the Petitioner may relinquish the LTA subject to payment of relinquishment charges, which will be decided in Petition No.92/MP/2015.

21. Subsequently, the Petitioner filed Petition No. 242/MP/2017 challenging the invocation of BG by the Respondent and sought the return of the encashed amount along with damages. The Commission, in its order dated 3.12.2018, in Petition No. 242/MP/2017, concluded that since the Petitioner had relinquished the LTA granted and the liability of the Petitioner for payment of relinquishment charges would be decided in light of the decision in Petition No. 92/MP/2015, there was no requirement to direct the Respondent to refund the encashed BG. However, it was also observed that if any amount becomes due and payable after the adjustment of the relinquishment charges, the same shall be refunded by the Respondent to the Petitioner with 9% interest from the date of encashment till the date of payment. With regard to the IA No. 80/2017 filed by the Petitioner therein praying for an *ex-parte ad-interim* order directing PGCIL to deposit the invoked amount to the Petitioner or, in the alternative, deposit the same with the Commission, the Commission observed that since there was no infirmity or illegality in the encashment of the BG during the pendency of the Petition No. 69/MP/2014, the prayer for refunding the BG amount to the Petitioner was liable to be rejected.

22. Thereafter, the Commission, in its order dated 8.3.2019, in Petition No. 92/MP/2015, prescribed a detailed methodology for the computation of compensation

with regard to relinquishment charges. Based on the order dated 8.3.2019, CTUIL computed the relinquishment charges for the Petitioner at Rs. 24.58 crore. Pursuant thereto, the Petitioner, vide its letter dated 24.5.2019, requested the CTUIL to refund Rs. 31.52 crore along with 9% interest from the date of encashment of BG, i.e. 23.10.2017 till the date of actual payment of Rs. 24.58 crore against the relinquishment charges intimated by the CTUIL. According to CTUIL, Rs. 27.09 crore were refunded to the Petitioner on 18.7.2017 after withholding Rs. 24.58 crore towards relinquishment charges and Rs. 4.43 crore towards potential tax liability.

23. The Respondent, CTUIL, also proceeded to file a Review Petition (Petition No.16/RP/2019) seeking review of the order dated 3.12.2018 in Petition No. 242/MP/2017 to the extent of an award of 9% interest on the amount to be refunded to the Petitioner after adjustment of relinquishment charges. The Commission, vide order dated 26.12.2019, modified the para 22 of the order dated 2.12.2018 (for which non-compliance has been alleged by the Petitioner) and directed the Respondent to refund any interest 'earned' from the date of encashment till the date of payment. Relevant portion of the said order dated 26.12.2019 is extracted as under:

“14. In terms of the Orders of the Commission, the encashed Bank Guarantee amount was not to be disbursed to the PoC pool and had to be retained by the Review Petitioner. Rather the Review Petitioner was required to adjust the encashed BG amount once order in Petition No. 92/MP/2015 was issued. Hence, the contention of the Review Petitioner that the amount encashed under the Bank Guarantee is disbursed to the POC Pool by CTU and there is no question of earning of interest thereon, is not justified in present case. Therefore, PGCIL is liable to pay the interest earned on encashed BG (after adjustment of relinquishment charges) amount from the date of encashment till the date of payment as per order in Petition No. 92/MP/2015. Accordingly, we modify the last sentence of Para 22 of the impugned order as under:

“However, if any amount becomes due and payable after adjustment of the relinquishment charges, the same shall be refunded by PGCIL to the Petitioner with any interest earned from the date of encashment till the date of payment.”

24. Thus, pursuant to the aforesaid order in Review Petition No.16/RP/2019, a direction to the Respondent, CTUIL, to refund the BG amount, after the adjustment of relinquishment charges to the Petitioner with “9%” interest from the date of encashment till the date of payment stood modified, and therefore, the prayers of the Petitioner in the present Petition have to be seen in light of this modified para 22 of the order dated 2.12.2018.

25. In view of the above, it is no longer in dispute that the entire BG amount after the adjustment towards the relinquishment charges of Rs.24.58 crore has been returned to the Petitioner. While the amount of Rs.27.09 crore was refunded by PGCIL on 18.7.2019, the balance retained amount of Rs. 4.43 crore towards the potential tax liability (on relinquishment charges) has also been refunded by the Respondent, CTUIL on 13.2.2023 and the question now only revolves around the interest thereon. Vide the Record of Proceedings for hearing dated 14.2.2023, CTUIL was directed to place on record the details of the total interest earned by it on the said amount. CTUIL vide its affidavit dated 23.3.2023 has *inter alia* submitted pursuant to the aforesaid direction of the Commission, it requested State Bank of India to provide the details of total interest earned in its account on Rs. 4.43 crore from 31.7.2021 (i.e. the date of transfer of funds from Respondent No.1, PGCIL to CTUIL) till 31.2.2023 (i.e. date of transfer of funds to the Petitioner) and as per the certificate dated 17.2.2023 issued by the State Bank of India, the total interest earned between 2.8.2021 and 13.2.2023 on the amount of Rs. 4.43 crore is Rs. 23,87,280/-, out of which Rs. 7,79,000/- was paid to the Petitioner on 13.2.2023, and the balance amount of Rs. 16,08,280/- was paid to the Petitioner on 13.3.2023. Thus, the total interest earned by the CTUIL for the period from 2.8.2021 to 13.2.2023 has been paid to the Petitioner.



CTUIL has further indicated that for the period prior to the above, it had sought the clarification from PGCIL (who was then entrusted with the functions of CTUIL till 31.3.2021) for the interest earned from the date of encashment up to 31.7.2021 and PGCIL, vide its e-mail dated 28.2.2023, informed that no interest was earned on the said amount as the funds were kept in the non-interest-bearing current account.

26. Thus, insofar as the interest on Rs. 4.43 crore for the period from 31.7.2021 to 31.2.2023 is concerned, there cannot be any dispute between the parties as CTUIL has duly deposited the interest earned by it on the said amount with the Petitioner. For the period prior to 31.7.2021, the Petitioner, vide its affidavit dated 16.5.2023, has submitted that PGCIL/CTUIL cannot be allowed the benefit of its own commercial decision to keep the money in a non-interest-bearing account so that it can escape from the direction of the Commission to refund the interest to the Petitioner. It has further been submitted that the Commission, in its order dated 26.12.2019, categorically rejected the contention of PGCIL/CTUIL that since the money was kept in the PoC Pool, no interest was earned and hence no interest became due. The Petitioner has also submitted that it is entitled to “time value of money” on the encashed amount regardless of whether the PGCIL/CTUIL earned interest or not on the said amount from the date of its encashment. The Petitioner has also submitted that PGCIL/CTUIL has not only taken a factually contradictory position on the aspect of interest earned on the encashed amount, but it is also in breach of the order dated 26.12.2019 in Petition No.16/RP/2019. In the said Petition, CTUIL has categorically submitted before the Commission that the encashed amount was “disbursed” in the PoC pool in terms of Regulations framed by this Commission and hence, there is no question of earning interest, which was ultimately rejected by the



Commission. Against this, now it has been stated that the encashed amount was instead 'retained' in 'non-interest-bearing account,' which raises serious questions on the credibility and truthfulness of its claim.

27. By its subsequent affidavit dated 17.7.2023, the Respondent, PGCIL, has stated that the BG amount of Rs. 56.10 crore furnished by the Petitioner was encashed on 25.10.2017, and subsequently, Rs. 27.09 crore was refunded on 18.7.2019 to the Petitioner after retaining Rs. 24.58 crore towards potential GST tax liability. PGCIL has submitted that upon separation of CTUIL from PGCIL w.e.f 1.4.2021, the encashed BG amount was transferred to CTUIL on 31.7.2021 and the interest applicable, if any, to the refunded amount of Rs. 27.09 crore is only up to 18.7.2019. With regard to the amount of Rs. 4.43 crore retained towards potential GST tax liability, the same was kept in the current account of PGCIL up to 31.7.2021, and on the same day, it was transferred to CTUIL. PGCIL has further submitted that no CLTD/FDR has been made by PGCIL in the amount of Rs. 27.09 crore and Rs. 4.43 crore respectively. However, interest payable by the bank on the auto sweep facility can be considered to calculate notional interest accrued, which has been derived on the basis of interest rates issued by the State Bank of India for different 'Bulk Term Deposits'.

28. During the course of the hearing on 31.7.2023, the learned counsel for the Petitioner submitted that pursuant to the liberty granted by the Commission vide Record of Proceedings for the hearing dated 5.7.2023, PGCIL has filed an affidavit dated 17.7.2023 stating therein that the notional interest accrued on the encashed Bank Guarantee amount due to the auto sweep facility may be considered 'interest earned' in the present case. The learned counsel for the Petitioner, however, emphasized that the

Respondent has been taking an inconsistent stand in its various affidavits on the aspect of the 'interest earned' on the encashed Bank Guarantee amount, and keeping in view that the Petitioner has been required to incur the interest at a much higher rate (approximately 14%), the Respondents ought to be directed to also pay the penal interest/ carrying cost on the amount of interest refunded/to be refunded by them.

29. Respondent No.1, PGCIL submitted that the submission of the Petitioner for carrying cost/penal interest on the amount of interest to be refunded is misplaced and is beyond the scope of the Commission's order dated 26.12.2019, in Review Petition No.16/RP/2019 whereby the Commission modified the earlier direction to the extent that the amount becoming due has to be returned with 'any interest' earned from the date of encashment till the date of payment and not 9% as held in the order dated 3.12.2018.

30. We have considered the submissions made by the parties. Admittedly, the contention of PGCIL/CTUIL that there is no question of earning interest on the encashed amount as the said amount is to be disbursed to the PoC Pool was rejected by the Commission therein. However, the para 22 of the order dated 31.12.2018 was ultimately modified to the extent that PGCIL was directed to refund the excess amount with "any interest" earned from the date of encashment till the date of payment. The said direction clearly calls for refunding the excess BG amount at the actual interest earned by it. However, in the present proceedings, PGCIL has indicated that no CLTD/FDR was made by it against the amounts of Rs 27.09 crore and Rs 4.43 crore at the relevant point in time. We are, however, unable to understand the rationale behind such an action by PGCIL. When CTUIL, upon the transfer of an amount of Rs. 4.43 crore from PGCIL after

its incorporation, could keep such an amount in an interest-bearing account, we do not see any reason as to why PGCIL could not keep such an amount in the interest-bearing account in the first place. Nevertheless, we do not find any need to delve into this aspect any further as PGCIL has clearly indicated that, for the above purpose, the Commission may consider the notional accrued interest of Rs. 3,49,95,283/- considering the auto sweep facility and interest rates for the Bulk Term Deposits as notified by the State Bank of India from time to time. We find such a proposal by PGCIL fair and reasonable for the effective implementation of the Commission's directions under order dated 26.12.2019. Accordingly, PGCIL is directed to pay Rs. 3,49,95,283/- to the Petitioner towards the interest on the refunded BG amount [comprising Rs. 2,67,98,690/- on Rs. 27.09 crore for the period from 25.10.2017 to 18.7.2019 and Rs. 81,96,593/- on Rs. 4.43 crore for period from 25.10.2017 to 31.7.2021] within fifteen days from the date of this order.

31. During the course of argument, the learned counsel for the Petitioner contended that PGCIL ought to be directed to pay the penal interest/ carrying cost on the amount of interest refunded/to be refunded. It is pertinent to mention that the Commission, in its order dated 26.12.2019 in Review Petition No. 14/RP/2019, directed the PGCIL to refund any interest earned from the date of encashment till the date of payment. Also, in the foregoing paragraph, we have already held the notional accrued interest on the BG amount as indicated by PGCIL on the basis of the auto sweep facility, and the relevant Bulk Term Deposits of SBI are reasonable and proper for effective implementation of the Commission's direction under order dated 26.12.2019. Thus, such a prayer of the Petitioner for penal interest/carrying cost on the above amount, in our view, is not only beyond the scope of the order dated 26.12.2019 but also beyond the prayers made in the

present Petition. In any case, as per Order 47 Rule 9 of the Code of Civil Procedure, no application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained. Therefore, in view of the settled position of the law, the contention of the Petitioner that PGCIL is liable to pay 14% interest, as the Petitioner has been required to pay to its lender(s), is not tenable as it would effectively amount to altering/reviewing the findings of the Commission in order dated 26.12.2019.

32. The Petitioner has prayed for the initiation of action against the Respondent under Section 142 read with Section 146 of the Act for non-compliance with the Commission's order dated 3.12.2018. As already noted above, the Commission's order dated 3.12.2018 came to be reviewed in Petition No. 16/RP/2019 and vide order dated 26.12.2019, the rate of interest as awarded in the original order was modified under the review order. Moreover, the excess BG amount, after the adjustment towards relinquishment charges, had already been returned to the Petitioner including the interest on the amount of Rs. 4.43 crore for the period from 31.7.2021 to 13.2.2022. Insofar as the interest for the prior period is concerned, as already noted above, PGCIL has indicated that notional accrued interest is for consideration and the Commission has issued the direction to pay such an amount within 15 days from the date of the order. Keeping in view the overall facts and circumstances of the present case, we do not find any reason to initiate proceedings against the Respondent, PGCIL, in terms of Section 142 of the Act

33. In light of the above discussion, Petition No. 282/MP/2019 is disposed of.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson

